

**DECISION OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of

Victoria and James Reilly

CUP17099

For a Conditional Use Permit

Introduction

Victoria and James Reilly applied for a conditional use permit to construct a multifamily residential project in the R-2 zone at 4529 Point White Drive NE.

An open record public hearing was held October 20, 2011. Jennifer Sutton, Planner, represented the Department of Planning and Community Development. The Reillys represented themselves.

All section numbers in the decision refer to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record consisting of the testimony and exhibits admitted at the hearing, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner in this matter.

Findings

1. Victoria and James Reilly, hereafter "Applicants", applied for a conditional use permit to allow a multifamily residential project consisting of six detached residences, including an existing residence, on 2.8 acres zoned R-2 at 4529 Point White Drive NE. Exhibit 1.
2. The subject site is a rectangular lot with frontage on Baker Hill Road NE, developed with a single-family residence and accessory buildings. It is separated from Point White Drive NE by an open space parcel owned by the Bainbridge Island Metropolitan Park and Recreation District but accessed from that street via a private roadway over an access and utility easement. The lot is fairly flat with forest on the northerly half.
3. The site is located within 0.2 miles of the Lynwood Center Neighborhood Service Center that is fairly intensively developed. To the south of the subject site is the City-owned open space. To the north and east are single-family residences and to the west the land is undeveloped. The R-2 zoning applies to property on all sides.

CUP17099

Page 1 of 8

4. The Comprehensive Plan land use map designates the subject site as Open Space Residential, OSR-2. Surrounding properties are also designated OSR-2. The staff report, Exhibit 25, found four land use element goals relevant to this proposal: OS 1.1 regarding protection of open space and critical areas; OS 1.3 to provide for a variety of housing options; OS 1.4 to retain existing vegetated buffers to preserve character; and OS 4.2 to recognize an existing development pattern of two units per acre. The proposal would support each of those goals.

5. Applicants propose to develop up to five additional residences on the undivided site. The site plan (Exhibit 11) shows six units or "lots" ranging in area from 6,765 square feet to 15,254 square feet, and an open space tract of 58,203 square feet encompassing a wetland and water quality buffer area on the northern half of the site. The existing access easement would be utilized and the roadway extended to form a one-way loop serving all the new units. There would be no vehicular access from Baker Hill Road NE.

6. Because the proposal is to have more than one dwelling unit on one lot, the use is classified as "multifamily." Section 18.06.320. Multifamily dwellings are permitted in the R-2 zone as conditional uses. Section 18.30.030. The density permitted is one unit per 20,000 square feet of lot area, which is exactly what is proposed here. Section 18.30.040. The minimum dimension of lots is 80 feet, Section 18.30.080, and the lot exceeds the required dimension. Maximum lot coverage allowed is 20 percent, Section 18.30.050, and staff recommends a condition to assure that limit is not exceeded. The setbacks required by Section 18.30.060 are 25 ft. for the front along Baker Hill Road and that setback is satisfied because of the wetland tract proposed for the northerly half, side setbacks of 5 feet with a combined side yard requirement of 15 feet and rear setback of 15 feet. The maximum building height is 30 feet, Section 18.30.070. Conditions are recommended to require eventual development to meet those requirements.

7. A wetland analysis report, submitted by Applicants (Exhibit 13) and reviewed by the City's natural resources planner, showed that there is a Category III wetland located on the northerly one-third of the site. The wetland is contiguous with wetlands to the east and west offsite and has a stream outlet flowing along the west half and entering the Schel-Chelb Estuary to the southwest. Drainage ditches on the site drain toward the stream offsite to the west, which drains into the estuary. Section 16.20.160 requires an 80-foot water quality buffer for Category III wetlands with low habitat functions when a high intensity land use project is proposed and a 15-foot building setback from the buffer. The proposal satisfies those requirements.

8. The entire site is within a geologically hazardous critical area determined to be a liquefaction area, a type of seismic hazard. Section 16.20.150 requires that applicants submit a critical area report by a geotechnical engineer for any project in a geologically hazardous area. The report, Exhibit 14, concludes that if recommendations in the report are followed, the five additional residences can be safely constructed on the property. The City's development engineer reviewed the report and recommended conditions that require that the report's recommendations be followed.

9. The existing roadway is through an easement across the open space to the south and is shared by two other residences to the east of the site. The roadway is proposed to be widened to meet the minimum 12-foot wide gravel standard with 3 ft. wide shoulders on each side. The roadway would be extended with a looped, one-way drive to serve the new residences. The proposed access has been reviewed by the City's development engineer and fire official and conditions recommended to assure that it meets the City's development standards and fire safety requirements.
10. Two parking spaces per dwelling unit are required in the zone. Section 18.81.030. The proposal includes two spaces on each "lot" and staff recommends a condition of approval requiring the spaces.
11. The subject property is served by a public water system, South Bainbridge Water, and is within the service area for City Sewer District 7 so can be connected to a public sewer system. Applicants have obtained nonbinding commitment of capacity letters. Exhibits 6 and 7.
12. The Bainbridge Island Fire Department reviewed the application and commented on access width, surface, grade, angle of approach and departure, and turnaround requirements, and code-required fire flow. Exhibit 5. The proposal responds to the comments and conditions are recommended to assure compliance.
13. The stormwater drainage system proposed would collect runoff and provide water quality treatment from the loop road and driveway and parking areas for each lot in a swale along the road that would convey the runoff to a bio-infiltration swale. Overflow from that swale would be conveyed to a culvert that discharges into thick vegetation and eventually into Puget Sound. Infiltration trenches would be provided for rooftop runoff sized appropriately for the amount of roof area. Exhibit 15. A plans will have to be reviewed and approved prior to issuance of a development utilities and building permits.
14. As the increase in traffic from the project is anticipated to be less than 50 trips per day, a traffic impact study was not required and the existing roadway system is assumed to accommodate that small an addition. The record does not show that, with the widening of the access roadway, the increase in traffic would cause any problems.
15. The undisturbed wetland to the north, the open space to the south, and dense vegetation on one side would screen the proposed development. The proposed spacing, size and height of the residences would allow them to blend into the character of the area, even without the dense screening.
16. The criteria for conditional use approval applicable to this proposal are as follows:
 1. The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property;

2. The conditional use will be served by adequate public facilities including roads, water, fire protection, sewer disposal facilities and storm drainage facilities;
3. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property;
4. The conditional use is in accord with the comprehensive plan and other applicable adopted community plans, including the nonmotorized transportation plan;
5. The conditional use complies with all other provisions of this code, unless a provision has been modified as a housing design demonstration project pursuant to Chapter 18.38 BIMC;
6. The conditional use will not adversely affect the area or alter the area's predominantly residential nature;
7. All necessary measures have been taken to eliminate the impacts that the proposed use may have on the surrounding area; and

Section 18.108.040A.

17. The City's Responsible Official found no probable significant adverse impacts from the proposal and issued a Mitigated Determination of Nonsignificance (MDNS) pursuant to SEPA on September 16, 2011. [Exhibit 22] The MDNS was subject to five conditions addressing potential archaeological resources, impacts from light and glare, and protection of the wetland and water quality buffer. The MDNS was not appealed.

18. Notice of the public hearing was published and mailed September 30, 2011, and posted on September 29, 2011.

19. Because Applicants propose to phase construction of the proposed residences over an indefinite period, they request that the conditional use permit not expire in the standard three years but that its life be extended until the final residence is built. Staff supports this request in that the Comprehensive Plan anticipates residential development and any change in the planned use for the area is likely to be toward greater intensity or density, rather than less.

Conclusions

1. The Hearing Examiner has jurisdiction to hear and decide this matter based on the Director's determination pursuant to Section 18.108.020C.
2. Notice and public hearing requirements of the Code were met.
3. The findings of fact show that the proposal satisfies the criteria for conditional use permit approval. Those findings show that the proposed development of five single-family detached residential structures in addition to the existing residence on one undivided lot would be largely indistinguishable from the surrounding development and blend in with the existing development on the north and east and would provide

CUP17099

protection to the wetland; that the proposed development will be served by adequate public facilities; that it will not be materially detrimental to uses and property in the vicinity; that it will be consistent with the comprehensive plan; that with the recommended conditions it will comply with other Code provisions; that the proposed use, density and "look" of the development will not alter the residential character of the area; and that conditions are proposed to mitigate the minor impacts the use could have. The criteria being satisfied, the conditional use permit should be granted subject to the recommended conditions of approval.

4. Approval of the request for the life to the conditional use permit to be extended is permitted by Section 18.108.060 and is appropriate in this case because the proposed development mirrors that allowed outright in the zone and area, and because any foreseeable change to the allowed use or density is to greater intensity, not lesser.

Decision

The Conditional Use Permit is granted subject to the following conditions:

Conditions pursuant to SEPA

1. Due to a possibility of archaeological resources in the area, a cultural resources assessment shall be submitted to the City and the Suquamish Tribe prior to any earth moving activities. If acceptable to the Suquamish Tribe, this requirement may be alternatively fulfilled by having an archeologist on site to monitor any excavation or earth work. The contractor is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.
2. To mitigate the possible impact on adjacent properties from light and glare, all exterior lighting shall be hooded and shielded so that the bulb is not visible from adjacent properties. All landscape lighting shall be downcast. All exterior lighting shall comply with BIMC Chapter 15.34. An exterior lighting plan or detail shall be submitted with any building permit for this project.
3. The 80-foot water quality buffer to the Category III wetland shall be regulated as outlined in BIMC 16.20.160. Highly visible temporary construction fencing or flagging and erosion control shall be installed at the edge of the wetland buffer prior to issuance of building permit(s) for residences on homesites 3 and 4. The temporary fencing and erosion control shall be removed after the site work has been completed and the site is fully stabilized per city approval, prior to occupancy of the building.
4. A split-rail type fence shall be installed along the edge of the wetland buffer prior to final inspection for building permit(s) for residences on homesites 3 and 4. Four signs indicating the presence of a protected wetland buffer shall be placed on the fence. Two of the signs shall face future homesites 3 and 4, and the other two shall face outward, at the edge of the wetland buffer at the north and south exterior property lines.

5. Normal and routine maintenance of existing vegetation within the wetland buffer is allowed without any additional permitting under BIMC Section 16.20.040. Any proposed vegetation removal, or restoration/ buffer enhancement planting must meet the requirements of BIMC Section 16.20.160, and must be reviewed as part of the building permit or a subsequent clearing permit.

Project Conditions

6. The applicant shall obtain an approved building, grading, or development utilities permit from the Department of Planning and Community Development, prior to any construction activities on the site.
7. As a multifamily development, all external setbacks shall meet the requirements of the R-2 zoning district, as shown on the conditional use permit site plan submitted to the City August 9, 2011. The required front setback to Baker Hill Road is 25 feet, although exceeded by the wetland buffer. The rear setback along the southern property line is 15 feet, and the minimum side setbacks (east and west property lines) are a minimum of 5 feet and combined setback of 15 feet. Total allowed lot coverage for the subject property is 24,400 square feet. Future permit applications shall clearly show existing built (or permitted) lot coverage, and lot coverage proposed with that permit application. Maximum building height is 30 feet measured to the mid-point of the highest gable.
8. The site shall be developed in substantial conformance with the site plan received August 9, 2011. The building permit site plan shall clearly show all zoning setbacks, wetland buffer, and 15 foot buffer building setback. Construction on each site shall meet building code, geotechnical and health district requirements applicable on the date each building permit application is determined to be complete. The homesite areas established under this CUP are subject to control by the critical areas regulations in effect as of August 26, 2011, for purposes including the determination of buffers, setbacks, and homesite areas. References in these conditions to project development needing to comply with geotechnical requirements in effect at the time of submittal of complete building permit applications are to construction of the buildings, not to the actual homesite areas.
9. Any building, grading, or development utilities permit shall satisfy the concerns listed in Bainbridge Island Fire Department Memo of June 30, 2011. Specifically the following comments shall be addressed to the Fire Marshall's satisfaction:
 - a. The maximum angle of approach for the new roadway is 15.5 degrees; the maximum angle of departure is 10.5 degrees.
 - b. Project and future residences shall comply with all applicable provisions of the adopted Fire Code.
 - c. The proposal shall meet fire flow requirements by installing a fire hydrant or installing residential fire sprinklers. If the applicant chooses to install the fire

- hydrant, it shall be installed prior to issuance of the first building permit. The proposed fire hydrant location shown on the approved utility plan is acceptable.
- d. The approved on-site access driveway design meets the requirement for an approved fire apparatus turnaround.
10. The roadway and drainage facility for the road shall follow the proposed plan outlined in the Conditional Use Permit Utility Report completed by Browne Engineering, Inc. and dated August 8, 2011.
 11. The roadway and drainage facility for the road must be completed within ten years of this project approval or prior to issuance of any building permit for new residences, whichever comes first. This work will be permitted through a development utilities permit.
 12. Final engineering design for the road and drainage facilities for the road must be reviewed and approved by a licensed geotechnical engineer prior to issuance of a development utilities permit. The applicant's engineer shall develop full engineering drawings for the construction of the roadway. Surface stormwater collection, conveyance and treatment shall be accomplished by a civil engineer who is registered in the State of Washington. Stormwater civil plans shall be designed in accordance with the City of Bainbridge Island Municipal Code (BIMC 15.20 and BIMC 15.21).
 13. All recommendations of the geotechnical report prepared by Aspect Consulting, Inc. dated August 3, 2011, shall become conditions of this approval, unless subsequent geotechnical reports make conflicting recommendations based on updated data or techniques.
 14. Civil construction plans and profiles for all storm drainage shall be prepared by a civil engineer licensed in the State of Washington and shall be submitted to COBI for review and approval. No building permits shall be issued and no construction shall be started prior to plan approval.
 15. At the time of any construction permit application, a Surface & Storm Water Pollution Prevention Plan (SWPPP) for the proposed development shall be provided for City review and approval in accordance with BIMC 15.20.
 16. A binding letter of water and sewer availability is required at the time of building permit application.
 17. A Building Clearance for Sewered Properties shall be submitted with building permit applications for each new residence. Any existing septic tank(s) must be pumped out with receipts, and properly abandoned/ filled.
 18. A geotechnical analysis that addresses the liquefiable soils with be needed with each individual building permit application. City geotechnical forms Steps 1 and 2 shall be submitted with each building permit application.

19. The applicant for each building permit shall sign and record an Indemnification or Hold Harmless agreement, pursuant to BIMC Section 16.20.150.D prior to issuance of the building permit.
20. Each new dwelling unit shall provide two parking spaces within its "homesite" area, outside of the private access driveway easement. If the spaces are not within a garage, the spaces shall be clearly shown on the building permit site plan.
21. An Administrative Site Plan and Design Review permit(s) will be required prior to construction of additional dwelling unit(s) on the subject property, if such regulation exists at that time. That Site Plan and Design Review permit could be for all five new units at once, or if only one unit is planned and designed at a time, then the applicant may have to apply for more than one Site Plan and Design Review permit. The Site Plan and Design Review application shall include building footprints and elevations.
22. Prior to issuance of any building permit, the property owner shall record a Declaration with the Kitsap County auditor showing that the land is bound by a conditional use permit. The Declaration shall be a covenant running with the land. The City shall provide the owner with the Declaration.
23. The Conditional Use Permit approval for multifamily dwellings, as shown in the approved site plan, shall not expire until completion of construction of the final (6th) dwelling unit.

Entered this 27th day of October 2011.



Margaret Klockars
Hearing Examiner *pro tem*

Concerning Further Review

NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

The decision of the Hearing Examiner is the final decision of the City in this matter. A person with standing may appeal this decision to the Kitsap County Superior Court. To be timely, a petition for review must be filed within the 21-day appeal period [see RCW Ch. 36.70].